

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 373 of 1989

Hon'ble MR.JUSTICE Y.B.BHATT

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

AUTOMOTIVE MANUFACTURERS LTD

Versus

NAGJIBHAI NATHABHAI RATHOD

Appearance:

Mr.A.K. Clerk for Petitioners
NOTICE SERVED for Respondent

CORAM : MR.JUSTICE Y.B.BHATT

Date of decision: 03/12/1999

ORAL JUDGEMENT

1. Heard the learned counsel for the petitioner. The respondent is absent though served.

2. This is a revision under section 115 CPC at the instance of the petitioners who are original defendants in a suit. The plaintiff had filed the suit for recovery of money, claiming that he is entitled to a difference between booking price for the truck in question, and a price he was required to pay at the time of delivery.

3. In this suit the present petitioners as defendants raised a preliminary contention as to the jurisdiction of the Court, and by application Exh.16 in the suit prayed that the issue of territorial jurisdiction be decided as a preliminary issue.

4. The trial court, after hearing the parties, accepted the contention of the plaintiff that it cannot be tried as a preliminary issue because it is a mixed question of law and fact. The only reason for coming to this conclusion, namely, that it involves a disputed question of fact, is on the basis of the averment made by the plaintiff in para 5 of the plaint to the effect that "the branch manager of the Rajkot branch had told the plaintiff that this difference of price would be paid to the plaintiff at Amreli." What the trial court failed to appreciate that this is not essentially a disputed question of fact which would affect the jurisdiction of the court. Even if it be assumed for the sake of argument that the branch manager of the Rajkot branch had given such an assurance, it is a well settled principle of law that consent cannot confer territorial jurisdiction upon a court. There is absolutely no other averment except this on the basis of which the plaintiff can invoke the jurisdiction of the Amreli Court. The trial court was, therefore, in error in refusing to frame the issue to treat and decide the issue as a preliminary issue. The legal principles are otherwise well established and to cite only one example, it has been held by a Division Bench of this Court in the case of Nahan Foundry Ltd. and another Vs. Mohanlal & Sons, reported at 15 GLR page 897, where it has been held that if more than one court has jurisdiction, parties can by agreement exclude the jurisdiction of one of the courts and that such agreement is not contrary to public policy.

5. However, as observed hereinabove, apart from the so-called assurance given by the branch manager of the Rajkot branch to the plaintiff, there is no other averment whatsoever on the basis of which the plaintiff can invoke the jurisdiction of Amreli Court. From the documents on record it would prima facie appear that the vehicle in question is sold at Selvaz within the jurisdiction of the court at Dadra Nagar Haveli, that it was delivered at Selvaz, that the defendant is carrying on his business at Selvaz, that the bill in question was issued at Selvaz and that the said bill was also signed by the plaintiff. Furthermore, there is a specific condition incorporated in the bill to the effect that only the courts at Dadra and Nagar Haveli would have

jurisdiction.

6. In the premises aforesaid, the order passed by the trial court rejecting the defendants' application to try the issue of jurisdiction as a preliminary issue is clearly erroneous and is required to be quashed and set aside. It is accordingly quashed and set aside. The trial court is directed to raise the issue as to jurisdiction as a preliminary issue and to hear and decide the same as expeditiously as possible and preferably before 30th April 2000. Rule is accordingly made absolute with no order as to costs. D.S. permitted.

7. The Registry shall send Yadi to the trial court forthwith.
